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Honorable Christopher M. Alston
Chapter 11
Hearing Location: Seattle, Rm. 7206
Hearing Date: July 6, 2018
Hearing Time: 9:30 a.m.
Response Date: June 29, 2018

7 UNITED STATES BANKRUPTCY COURT
8 WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

9 In re:
10 NORTHWEST TERRITORIAL MINT, LLC,
11 Debtor.
12

Case No. 16-11767-CMA

**TRUSTEE'S REPLY IN SUPPORT OF
MOTION TO APPROVE TERMS OF
SEVERANCE AGREEMENT WITH
EDGAR CHACON**

13 **I. REPLY**

14 Mark Calvert (the "Trustee"), Chapter 11 Trustee of Northwest Territorial Mint, LLC
15 ("NWTM" or the "Debtor"), files this reply in support of his motion seeking approval of the terms of
16 a severance agreement with Edgar Chacon (the "Motion"). The Motion requests that the Trustee be
17 permitted to pay Mr. Chacon a stay-on or retention bonus, which the Trustee and Mr. Chacon have
18 called a "severance payment." The bonus is meant to incentivize Mr. Chacon to stay employed
19 through the Trustee's closure of the Dayton facility.

20 The lone objection to the Motion was filed by Bill Atalla, the former CEO of NWTM who
21 was hired by the Trustee on a postpetition basis. Mr. Atalla's objection to the Motion is meritless.
22 Mr. Atalla erroneously conflates the relief requested by the Motion with his request for allowance of
23 an administrative expense claim based on services he provided to the estate prior to his termination.
24 Mr. Atalla's separate request is the subject of an ongoing contested matter that will be determined by
25 this Court at a later date.
26

1 Mr. Atalla argues that the proposed “severance” to be paid to Mr. Chacon is unfair and
2 should not be approved because the Trustee has argued, in the context of a separate contested matter,
3 that Mr. Atalla should be paid on a pro rata basis, along with other administrative expenses in this
4 case. According to Mr. Atalla, the Trustee cannot pay Mr. Chacon 100-cent dollars if Mr. Atalla’s
5 claim is paid pro rata with other allowed administrative claims.

6 The “severance payment” to Mr. Chacon for which the Trustee seeks approval in the Motion
7 is, in reality, a retention bonus. It is not equivalent to the “severance” Mr. Atalla seeks to have paid
8 by the estate. Mr. Atalla’s employment was terminated in December and he no longer works for the
9 Debtor. Unlike Mr. Atalla, Mr. Chacon continues to work for the benefit of the estate and is critical
10 to the efforts of the Trustee to wind-down the estate. The “severance” that the Trustee seeks to pay
11 Mr. Chacon is an incentive for Mr. Chacon to continue to provide services to the estate through the
12 closing of the Dayton, Nevada facility—a facility which Mr. Chacon manages. Mr. Chacon has
13 continued to perform his employment services in reliance on the Trustee’s commitment to seek court
14 approval of the Trustee’s agreement to pay this retention bonus.

15 In contrast to Mr. Chacon, Mr. Atalla provides no ongoing value to the estate and his
16 services are entirely unnecessary to the Trustee’s efforts to vacate the premises in Dayton and close
17 the case. For that reason, the Trustee terminated his employment. The severance for which Mr.
18 Atalla seeks an order compelling payment was part of Mr. Atalla’s original employment agreement
19 with the Trustee. It was not, however, a retention or stay-on bonus for which the Trustee sought
20 Court approval to pay with 100-cent dollars.

21 The relief sought by the Motion is therefore entirely distinguishable from the facts of the
22 dispute with Mr. Atalla. Mr. Atalla’s entitlement to severance is the subject of an ongoing contested
23 matter with the Trustee, which is set for trial in August. The relief sought by this Motion is a distinct
24 matter that, if approved, will do nothing to improve Mr. Atalla’s argument that he is entitled to be
25 paid ahead of other administrative claimants in this case.

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III. CONCLUSION

For the foregoing reasons, the Trustee requests that the Court approve the terms of the Severance Agreement.

Dated this 3rd day of July, 2018.

K&L GATES LLP

By /s/ David C. Neu

Michael J. Gearin, WSBA #20982

David C. Neu, WSBA #33143

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Attorneys for Mark Calvert, Chapter 11 Trustee

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CERTIFICATE OF SERVICE

The undersigned declares as follows:

That she is a Paralegal in the law firm of K&L Gates LLP, and on July 3, 2018, she caused the foregoing document to be filed electronically through the CM/ECF system which caused Registered Participants to be served by electronic means, as fully reflected on the Notice of Electronic Filing.

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

Executed on the 3rd day of July, 2018 at Seattle, Washington.

/s/ Denise A. Lentz
Denise A. Lentz